

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ENZO BIOCHEM, INC., *et al*

Plaintiffs,

-v-

PERKINELMER, INC., *et al.*,

Defendants.

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ELECTRONICALLY FILED
DOC #: _____
DATE FILED: **3-5-2014**

No. 03 Civ. 3817 (RJS)

ORDER

RICHARD J. SULLIVAN, District Judge:

On November 11, 2013, the Court issued an order setting a trial date of March 18, 2014, and directing the parties to make pre-trial submissions by March 4, 2014, and to appear for a final pre-trial conference on March 14, 2014. (Doc. No. 121.) Now before the Court are the parties' numerous submissions, all filed earlier *today*, including: (1) the parties' untimely – and purportedly “joint” – voir dire, jury charge, verdict form, and pre-trial order; (2) five separate motions in limine; (3) four separate *Daubert* motions to preclude expert testimony; and (4) two letters and a proposed briefing schedule related to a contemplated motion to quash a third-party subpoena, which was assigned to the Court's docket this morning. Additionally, there are two outstanding motions to strike supplemental expert reports that were filed on March 2, 2014. A brief perusal of these materials reveals that even if the Court were to give its undivided attention to this case for the next two weeks, it is unlikely that it could wade through this barrage of materials – the vast majority of which is hotly contested – and resolve the parties' improperly-filed and poorly-articulated submissions in time for the March 18, 2014 trial date.

For starters, many of the memoranda filed in connection with the above-referenced motions are heavily redacted, and in some instances, electronically filed under seal. Notwithstanding the fact that the parties failed to seek the Court's permission to file their submissions in such manner, the Court has yet to receive unredacted versions of these filings, either in electronic format or hard copy.¹ With respect to the purportedly "joint" pre-trial submissions, the proposed jury instructions and verdict form alone are so rife with disputes that the documents amount to two separate proposals, one on behalf of Enzo and one on behalf of PerkinElmer.

Similarly egregious, the proposed joint pre-trial order includes hundreds of objections to what appear to be many hundreds of exhibits, though the Court cannot know for sure because the exhibits are not numbered. The proposed order also includes numerous objections to deposition designations. And yet, once again, the Court does not have access to the exhibits or the depositions, nor does the proposed order contain sufficient summaries of the exhibits or depositions from which the Court might resolve the many dozens of disputes raised by the parties.

In short, it is abundantly clear that the parties are not ready for trial, and that they have little grasp of what is required to get the case to such a posture. Accordingly, IT IS HEREBY ORDERED THAT the trial is adjourned without date. IT IS FURTHER ORDERED THAT the parties shall appear for a conference on Tuesday, March 18, 2014 at 10:00 a.m. to discuss the numerous motions, objections, and disputes that must be resolved prior to trial. IT IS FURTHER ORDERED THAT the parties shall make a joint submission to the Court, no later than March 10,

¹ In fact, the Court has yet to receive hard copies of any of these filings, except for the pretrial submissions which were filed in the Clerk's Office this morning at 3:33 a.m. Thus, the parties have largely failed to comply with the Court's Individual Practices regarding courtesy copies. As of the filing of this Order, the Court has yet to receive an electronic copy of the pretrial submissions.

2014, justifying why the various redacted and sealed filings are appropriate in light of the presumption of open records, *see Lugosch v. Pyramid Co. of Onondaga*, 435 F.3d 110 (2d Cir. 2006); the parties shall also provide the Court with unredacted versions of all filings for which the parties seek the Court's review.

SO ORDERED.

DATED: March 5, 2014
 New York, New York



RICHARD J. SULLIVAN
UNITED STATES DISTRICT JUDGE